

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Hector Longoria,

10 Petitioner,

11 v.

12 David Shinn, et al.,

13 Respondents.
14

No. CV-22-02203-PHX-GMS

ORDER

15 Pending before the Court is the Report and Recommendation (R&R”) of Magistrate
16 Judge Eileen S. Willett (Doc. 16) regarding Hector Longoria’s Petition under 28 U.S.C. §
17 2254 for a Writ of Habeas Corpus (Doc. 1). The R&R recommends that the Petition be
18 dismissed with prejudice as all of Petitioner’s habeas claims are procedurally defaulted
19 without excuse. The R&R does note that a petitioner may overcome a procedural default
20 by proving that the failure to consider the federal claim will result in a fundamental
21 miscarriage of justice. *Hurles v. Ryan*, 752 F.3d 768 (9th Cir. 2014). But it also notes that
22 Petitioner, rather than arguing that he qualified for the fundamental miscarriage of justice
23 exception, argued that his petition had been timely filed. (Doc. 16 at 11). The Magistrate
24 Judge advised the parties they had fourteen days to file objections to the R&R (R&R at 11
25 (citing *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); U.S.C. §
26 636(b)(1); Fed. R. Civ. P. 6, 72). Petitioner filed objections on October 9, 2023 (Doc. 17).
27 In that objection Petitioner does not assert that he argued in his Petition for the proposition
28 that he met the fundamental miscarriage of justice exception. He nevertheless argues it as

1 an objection to the determinations of the R&R. (Doc. 17 at 4). Respondents filed a reply
2 on October 23, 2023 (Doc. 19). In the Reply Respondents demonstrate that Petitioner has
3 set forth no new evidence showing that a constitutional violation has occurred in his case
4 that probably resulted in his conviction when he was actually innocent. *Schlup v. Delo*,
5 513 U.S. 298, This is the appropriate standard for the exception he invokes in his objection.
6 The government further sets forth sufficient evidence providing factual support for
7 Petitioner's guilty plea.

8 The Court has considered the objections and reply and reviewed the Report and
9 Recommendation de novo. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that
10 the court must make a de novo determination of those portions of the Report and
11 Recommendation to which specific objections are made). The Court agrees with the
12 Magistrate Judge's determinations, further finds that petitioner offers no new evidence
13 showing that a constitutional violation has occurred in his case that probably resulted in his
14 conviction when he was actually innocent and overrules Petitioner's objections. *See* 28
15 U.S.C. § 636(b)(1) (stating that the district court "may accept, reject, or modify, in whole
16 or in part, the findings or recommendations made by the magistrate").

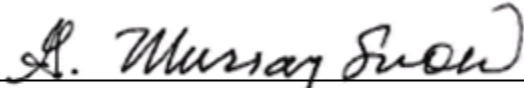
17 **IT IS THEREFORE ORDERED** that the Report and Recommendation of the
18 Magistrate Judge (Doc. 16) is accepted and supplemented with the determination that no
19 fundamental miscarriage of justice will result from Petitioner's procedural default.

20 **IT IS FURTHER ORDERED** that the Clerk of the Court enter judgment
21 dismissing Petitioner's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. §
22 2254 (Doc. 1) with prejudice. The Clerk shall terminate this action.

23 **IT IS FURTHER ORDERED** Petitioner's Application for Certificate of
24 Appealability (Doc. 18) is denied because dismissal of the Petition is justified by a plain
25 procedural bar and that "jurists of reason would find it debatable whether the petition states
26 a valid claim of the denial of a constitutional right and that jurists of reason would find it
27 debatable whether the district court was correct in its procedural ruling." *Slack v.*
28

1 *McDaniel*, 529 U.S. 473, 484 (2000); see also 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*,
2 132 S. Ct. 641, 648 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

3 Dated this 24th day of January, 2024.

4 
5 _____
6 G. Murray Snow
7 Chief United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28